

Court of Appeals, State of Michigan

ORDER

People of MI v Elmore Nichols Jr

Docket No. 352101

LC No. 12-008776-01-FH

Karen M. Fort Hood
Presiding Judge

Christopher M. Murray

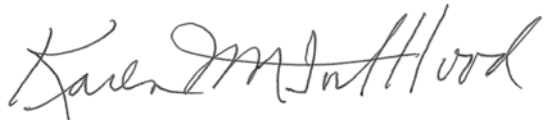
Cynthia Diane Stephens
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application, the portion of the trial court's opinion and order holding that res judicata precludes defendant from raising his challenges regarding offense variables (OVs) 4 and 9 is VACATED. The trial court erred when it ruled that res judicata barred defendant from raising these challenges. Nor is consideration of these issues barred by MCR 6.508(D)(2), as defendant has not previously challenged the scoring of OV's 4 or 9, nor has defendant previously challenged trial counsel's effectiveness with regard to the scoring of these OV's. The matter is REMANDED to the trial court for reconsideration of defendant's challenges to the scoring of OV's 4 and 9, as well as his claim that trial counsel was ineffective for failing to challenge the scoring of OV's 4 and 9, on the merits. In all other respects, the delayed application is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

The motion to remand is DENIED, but without prejudice to the trial court's ability to order that an evidentiary hearing be held pursuant to MCR 6.508(C) should the trial court determine that an evidentiary hearing is necessary to resolve the merits of the issues before it on remand.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 10, 2020

Date



Chief Clerk